

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 77 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ATUL ROMESHCHANDRA DESAI

Versus

BANK OF BARODA & 1

Appearance:

MR. V.B. PATEL WITH MR KM PATEL for Petitioner

MR. P.K. RELE AND MR. BHARAT J. SHELAT WITH MR.
DARSHAN PARIKH, Advocates for the respondents Nos. 1
and 2.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/03/96

ORAL JUDGEMENT

The petitioner who was working with the respondent Bank as Deputy General Manager, seeks a direction on the respondents that they should accept his request for voluntary retirement with consequential

benefits. He challenges the order dated 14.10.94 of the respondent Bank rejecting his application for voluntary retirement and also challenges the show cause notice dated 16/19th November, 1994 by which he was called upon to show cause as to why disciplinary proceedings should not be initiated against him for the reasons mentioned in that notice.

2. The petitioner, on 11th August, 1994 sent a communication to the respondent Bank, a copy of which is at annexure "B" to the petition, stating that as he turned 55 years of age on 2nd August, 1994, his request for voluntary retirement from the Bank's service should be considered. Again on 19th August, 1994, he wrote to the Bank to consider his request for voluntary retirement from service and in that connection to waive or reduce the notice period from three months to two months and relieve him on 8th October, 1994 instead of 10th November, 1994 on which date the three months period was to expire. In response to his request for voluntary retirement under these two letters, the Bank responded by its letter dated 12/14th October, 1994 stating that his request was put up before the competent authority and the competent authority had regretted its inability to consider his request for voluntary retirement under the scheme for such voluntary retirement. Thereafter, on 10.11.1994, being the date on which the three months period was to end, the petitioner wrote to the respondent Bank referring to the letter dated 12/14th October, 1994, that although the request of the petitioner for voluntary retirement was regretted, he was leaving the services of the Bank after office hours on 10.11.1994, in terms of Regulation 20(2) of the Bank of Baroda (Officers') Service Regulations. In context of this letter, the Bank wrote to him on 11.11.1994 that he could not, under Regulation 20(2), leave service of the Bank in this manner and that he ought to resume his duties, failing which action as may be deemed fit under the provisions of the Bank of Baroda Officer Employees (Discipline and Appeal) Regulations, 1976 would be taken. On 14.11.1994, the petitioner again referred to his request for voluntary retirement under the Voluntary Retirement Scheme and declared that he stood retired from 10.11.1994 and that he should be paid his dues on that footing with interest at the rate of 24% per annum. In context of the communication dated 11.11.1994, the petitioner wrote to the respondent on 14.11.1994 that the respondent Bank was bound to allow the petitioner to voluntarily retire and that non-acceptance of his request for voluntary retirement was null and void and liable to be ignored. He therefore, called upon the respondent Bank to withdraw

the letter dated 12/14th October, 1994. Thereupon, the Bank wrote to him on 15/16th November, 1994 stating that the decision communicated on 14.10.1994 regretting his request for voluntary retirement was taken by the competent authority - namely the Chairman, in exercise of his powers under the scheme for voluntary retirement in view of certain irregularities which were alleged to have been committed by the petitioner in processing, sanctioning and follow-up of certain accounts while he was posted at the London Office of the Bank. The petitioner was advised to resume duties forthwith, failing which it was stated that the Bank will be constrained to take action under the Discipline and Appeal Regulations of the Bank. It was also stated that the letter of the petitioner dated 10.11.1994 which referred to Regulation 20(2) could not even be treated as a resignation and if it was intended as a resignation, then the Bank did not accept it for the same reasons. On 16th/19th November, 1994, the impugned show cause notice (copy at annexure "H") was issued on the petitioner alleging that serious irregularities were committed in granting credit facilities to Shri Mukund Maganbhai Patel and his associates. It was also stated that though the account of the associate company named in the notice was not satisfactory and the account was reported to Reserve Bank of India as a problem credit as of 30.9.1989, numerous adverse features were not brought to the notice of the higher authorities by the petitioner while recommending to the higher authorities to allow the petitioner to release the facilities to that company. It was alleged that the petitioner had, in the process of obtaining clearance with-held vital information and mislead the higher authorities and allowed further credit facilities exposing the additional funds of the Bank to unnecessary risk and loss. It was alleged that the petitioner, though familiar with the deceitful behaviour of the said party, allowed a temporary overdraft of Pound Sterling 247,688.89 on 16.10.1990, which was increased upto Pound Sterling 535,261.62 on 23.10.1990. It was alleged in the notice that such temporary over-draft could be allowed only to a well established account of a client, who had satisfactory relations with the Bank and the petitioner had grossly flouted this rule by granting a huge temporary over-draft to this party. The over-draft was to be adjusted within a weeks' time, but it was not adjusted and the Bank was likely to incur a huge financial loss of the outstanding amount of Pound Sterling 175,622 plus interest from 30th June, 1991. It was also noted that in February, 1991 the petitioner was asked to clarify his position vis-a-vis granting of the said temporary over-draft. It was alleged that the

petitioner had stated on 4.3.1991 that he was making efforts to realise the amount and that an amount of Pound Sterling 70,000 was being credited on that day. In this regard, it was alleged that from the record it was found that there was no credit on that day in the accounts of the concerned party and therefore, the reporting of the petitioner to the Central Office about the recovery in the account was not borne out from the facts and amounted to misleading the higher authority. It was alleged that because of this attitude of the petitioner, Bank was likely to suffer loss to the tune of Rs. 17,99,11,150/approximately at the Bank's London Main Office. The petitioner was therefore, called upon to show cause as to why disciplinary action should not be initiated against him by the Bank for serious lapses and irregularities committed by him due to which the Bank was put to a considerable financial loss. He was given 15 days time to render his explanation. By communication dated 29.4.1994 addressed through his Advocate to the Bank, the petitioner had sought extension of time till 31.12.1994 for submitting his reply to the show cause notice. Time was extended upto 31.12.1994 by the Bank's communication dated 9.12.1994 addressed to his Advocate. The petitioner, instead of responding to the show cause notice by showing as to why disciplinary proceedings should not be initiated against him, has preferred to approach this Court by way of this petition, which was filed on 4.12.1994.

3. The Senior learned Counsel appearing for the petitioner raised the following contentions:-

- (i) That though the letter written by the petitioner on 11th August, 1994 requested the Bank to permit him to voluntary retire, it, on the whole, conveyed the petitioner's intention to leave the service with a request to consider his case for voluntary retirement and therefore, Regulation 20(2) of the Bank of Baroda Officer Employees (Discipline and Appeal) Regulation, 1976 was attracted and since there was no order of suspension nor any Departmental enquiry pending against the petitioner, he ceased to be an employee of the respondent Bank with effect from 10/11/1995 being the date on which three months' time expired after sending the communication dated 13th August, 1994;
- (ii) Even if the case was regarded as a request for voluntary retirement only, the Bank could not

have arbitrarily refused permission to the petitioner to retire from service. The Bank had failed to appreciate the nature of rights of the petitioner, which entitled him to retire on completion of 55 years of age. Under these circumstances, the Bank could not have refused to accept his request for voluntary retirement.

- (iii) No reasons were indicated in the letter of regret dated 14.10.94 and therefore, the refusal was bad in law and arbitrary.
- (iv) Reasons which were sought to be given in the subsequent communications dated 15/16.11.1994 and 16/19.11.1994 by the Bank did not exist when the petitioner's request to retire him was rejected and these reasons cannot validate the earlier order of rejecting the petitioner's request.
- (v) What was not regarded or considered as misconduct to be proceeded upon earlier for a period of nearly 5 years after TOD was sanctioned in 1989, cannot, by passage of time, constitute misconduct.
- (vi) There was delay in initiating action of nearly five years during which period the Bank was fully aware of the situation. In this connection, earlier the explanation of the petitioner was sought and there were audit reports and yet no steps were taken against the petitioner for any alleged misconduct.
- (vii) That what was not considered to be misconduct, cannot be dubbed as misconduct today. Proceedings after a long lapse of time would amount to denial of adequate opportunity to the petitioner and therefore, it is in violation of the principles of natural justice.
- (viii) The refusal of the Bank denying voluntary retirement to the petitioner was possible for an oblique purpose with an idea to prevent the Officers from leaving the Bank.

4. Reliance was placed by the learned Counsel for the petitioner in support of his submissions on the decisions in A.L. Kalra Vs Project & Equipment

Corporation of India Ltd. 1984 (2) LLJ 186 S.C, Union of India and ors. Vs. J. Ahmed, AIR 1979 S.C 1022, Chief of the Army Staff and ors. Vs. Major Dharam Pal Kukrety, AIR 1985 S.C 703, J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and ors. 1991 (2) S.C 283, Mohinder Singh Gill and anr. Vs. The Chief Election Commissioner, New Delhi and ors., AIR 1978 S.C 851, Dinesh Chandra Sangma Vs. State of Assam and ors. 1978 (1) LLJ 17 and B.J. Shelat, Vs. State of Gujarat and ors. AIR 1978 S.C 1109.

5. The learned Senior Counsel appearing for the respondent Bank referring to Regulations 20 and the Voluntary Retirement Scheme, submitted that they were mutually exclusive the Scheme for voluntary retirement did not give any right to the employee to voluntarily retire irrespective of the acceptance of such request and in fact the Scheme gave a total discretion to the competent authority to accept the request or not. He submitted that the parameters laid down in Regulation 20(2) need not be read in the voluntary retirement scheme which had broader contours. He further submitted that even if the letter dated 12/14th October, 1995 did not give reasons for refusing the petitioner's request, it cannot be said that the order of refusal was void. He submitted that the contemporaneous record clearly discloses that there did exist reasons for refusing the request of the petitioner for voluntary retirement. In support of his submissions, the learned Counsel relied upon the decisions in Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganduly and anr. AIR 1986 S.C 1571; Income Tax Officer, Cuttack and ors. Vs. Shri Biju Patnaik - AIR 1991 S.C 464, Rangnath Vs. Daulatrao and anr. AIR 1975 S.C 2146, K. Jayaraman Vs. Supdt. of Police, Erode and anr. 1991(2) LLJ (Madras) and 1994 (2) S.C.C 746.

6. The short question that arises for consideration is whether the petitioner stood relieved from his employment on expiry of three months after sending communication dated 11th August, 1995 i.e. whether he was in Bank's employment after 10.11.1995 or not. If he stood relieved on that day, the bank would not be able to initiate Departmental proceedings against him for misconduct at a later date. If he did not stand relieved, then it would be within the powers of the Bank to proceed against him Departmentally. Letter dated 11th August, 1994 followed by the letter dated 19th August, 1994 abundantly make it clear that the petitioner wanted to voluntarily retire due to his having attained the age

of retirement on 2nd August, 1994. In none of these two letters the petitioner ever expressed that he wanted to resign. Consequences of voluntary retirement and a resignation would be different. With his background, the petitioner cannot be expected not to know this distinction. He has in terms referred to the scheme of voluntary retirement and even after refusal of the request of the respondent Bank, he had insisted on being paid the dues on the footing that he had voluntarily retired from the Bank under the voluntary retirement scheme with effect from 10.11.1994. There is therefore, absolutely no scope for judging the petitioner's case in light of Regulation 20(2) of Officers' Service Regulation, 1979 as amended in 1982, which reads as under:-

"Regulation 20.

xxxxxxx xxxxx

(2) An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue the service or resign. The period of notice required shall be three months and shall be submitted to the Competent Authority as prescribed in these Regulations.

Provided that the Competent Authority may reduce the period of three months or remit the requirement of notice.

In this context, Regulation 20 3(1) would also be relevant since contention was canvassed on that basis that in the absence of any disciplinary proceedings, a request to leave or discontinue service made by an employee cannot be refused. The said provision to the extent it is relevant, reads as under:-

"(3)(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the Bank without the prior approval in writing of competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for

the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority."

Since the petitioner's communication dated 11.8.1994 was clearly not for just leaving or leaving the service or discontinuing the service, the aforesaid provision can have no application to this case.

7. The voluntary retirement scheme of the Bank is reflected in the Rule, which is reproduced at Annexure "E" to the petition as follows:-

SCHEME FOR VOLUNTARY RETIREMENT

(i) The Competent Authority may, at its discretion, allow an officer to retire voluntarily from the Bank's service on or after his/her completing 55 years of age or 30 years of total service (inwhatever capacity/ies), whichever is earlier, on giving 3 months' notice in writing, provided that the Competent Authority may reduce the period, or remit the requirement, of notice, provided further that the Competent Authority may, at its discretion, allow an officer to withdraw his request for such voluntary retirement before expiry of the notice period or before he/she is relieved from the Bank's service.

(ii) The officer voluntarily retiring as aforesaid shall be entitled to all the terminal benefits in accordance with the Regulations and rules relating thereto.

(iii) The Competent Authority, for the purpose of Rules (1) and (ii) above shall, if the officer is a member of any Committee of Executives, be Chairman & Managing Director, and if the officer is not a member of any Committee of Executives, be Committee of Executives or Chairman & Managing Director."

It will at once be noticed from the said scheme for voluntary retirement that an Officer has no absolute right to retire voluntarily from the Bank's service even on completion of 55 years of age or 30 years of service. His request with 3 months' notice in writing is required

to be put up before the competent authority who has the discretion to allow an officer to retire voluntarily. The Officer voluntarily retiring is entitled to the terminal benefits as per the Regulations and Rules of the Bank. The words "The Competent Authority may at his discretion allow an officer to retire voluntarily" clearly indicate that for valid reasons the request for voluntary retirement can be turned down by the competent authority. The grounds for such refusal need not be confined to the grounds for refusing to accept the resignation which are specified in Regulation 20(3). The scheme for voluntary retirement stands on its own provisions and need not take colour from Regulation 20(2) and (3) which operate in a different field namely where an employee resigns or wants to discontinue service of the Bank. Since the petitioner did not put in any resignation under Regulation 20(2), there was no question of his having ceased to be an employee of the Bank on 10.11.1994. His request for voluntary retirement depended upon the acceptance of the competent authority and since his request was not accepted, he could not be considered even to have voluntarily retired on 10.11.1994. Therefore, when the petitioner was given the impugned show cause notice, he was in the service of the respondent Bank. The only question which is now required to be considered is whether there were good grounds for refusing the request of the petitioner to voluntarily retire.

8. The request of the petitioner for voluntary retirement was refused clearly on the ground that certain irregularities were alleged to have been committed by the petitioner in processing, sanctioning and follow-up of certain accounts while he was posted in the London Office. The letter dated 15/16th November, 1994 of the Bank clearly discloses that the decision not to accept the petitioner's request for voluntary retirement was taken by the competent authority under the scheme for voluntary retirement in view of these alleged irregularities committed by the petitioner while he was in London Office. Therefore, even if the reason is not disclosed in the first communication dated 12/14.10.1994, it is clear that the said reason did exist at the time when the said communication was sent to the petitioner. The show cause notice gives details of the allegations and clearly alleges that the petitioner had mislead the higher authorities in the matter of grant of additional credit facility to the parties named in the show cause notice, as a result of which the Bank was likely to suffer a huge loss of about Rs.18 crores. The show cause notice in terms record that in Feb. 1991 the petitioner

was asked to clarify this position in the matter of grant of temporary overdraft to the parties named therein. From the record it appears that a Committee was constituted to investigate the matter somewhere in the year 1993 and from the fact that the petitioner has asked for the report of that Committee, it appears that even the report has been submitted. It appears that the action is initiated by the respondent Bank in view of the investigation and the report. Mere passage of some time in a matter like this, cannot absolve the petitioner from any further scrutiny or enquiry. The petitioner was in the London office when the alleged irregularities are said to have been committed. The matter was to be investigated at this end and looking to the huge financial stake of nearly 18 crores, if some time has lapsed in initiating the steps, it cannot be said that the Bank's action is without jurisdiction or that it is arbitrary or unjust. The wide amplitude of the discretion to refuse voluntary retirement reflected from the scheme for voluntary retirement, would take within it's sweep even the necessity to make such investigation when the allegations of suppressing material facts from the higher authorities and showing favours to parties are levelled against the petitioner. Pecuniary interest of the Bank is the foremost consideration having regard to the nature of it's activities and that is why in Rule 3(1) of the Bank of Baroda Officer Employees' (Conduct) Regulations, 1976 the duties enjoined upon every officer at all times to take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer, are defined. In context of this Rule 3(1) the specific provisions of Rule 24 of the Conduct Rule is to be kept in mind and as per which a breach of any provisions of these regulations shall be deemed to constitute a misconduct punishable under the Discipline and Appeal Rules, and therefore, there is a specific provision in these Rules which makes violation of even Rule 3(1) an act of misconduct. Therefore, unlike in Kalras' case (supra), we have a specific misconduct in this case of an officer not protecting the interests of the Bank, the particulars of which are alleged in the show cause notice issued for seeking explanation of the petitioner only on the aspect as to whether disciplinary proceedings should be initiated against him or not. It transpires therefore, from the material on record, that the request of the petitioner for voluntary retirement was refused for valid reasons and that the petitioner having yet not reached the age of superannuation, continued to be in service when the show cause notice was

issued to him. It therefore cannot be said that the initiation of the action against the petitioner was without jurisdiction or illegal. In this view of the matter, the decisions on which reliance was placed on behalf of the petitioner cannot assist the petitioner.

9. In Kalra's case (supra) there was Rule 5 of Projects and Equipment Corporation of India Ltd., Discipline and Conduct Rules which specified misconduct. In that context, it was held that the Rules made a clear distinction about what would constitute misconduct. It was on the facts of the case found that the fact of not refunding the advance which was taken did not constitute misconduct within the Rules of 1975. In the present case Rule 24 of the Conduct Rules clearly lays down that any breach of any of the provisions of the Regulations would be deemed to constitute a misconduct punishable under the Discipline and Appeal Regulations. Therefore, Kalra's case does not help the petitioner.

10. The decision of the Supreme Court in Union of India Vs. J.Ahmed - AIR 1979 S.C 1022 also cannot assist the petitioner because in the present case there are allegations of serious nature against the petitioner and it is not a case of a simple negligence in performing of duty or error of judgement as was the case before the Supreme Court.

11. The decision of the Supreme Court in the case of J.K.Aggarwal Vs. Haryana Seeds Development Corporation Ltd. - (1991) 2 SCC 283 was relied upon in support of the contention that the Court can intervene to stop the proceedings which were proceeding in a manner contrary to natural justice. This decision was relied upon since the respondents have not supplied four documents of 1989 referred to in the Civil Application made in this petition. It is not as if the petitioner had responded to the show cause notice and in that context asked for those documents. At the hearing, it was submitted on behalf of the respondent that the respondent Bank cannot deny copies of any relevant documents, which may be relied upon during the enquiry and in fact the respondent Bank would be under an obligation to supply all the relevant documents to the petitioner. The petitioner has approached this Court at a very premature stage when the respondent Bank has only called upon him to show cause as to why a Departmental enquiry should not be initiated against him. If he makes requests for these documents, it is clear that the respondent Bank will be required to supply them if they are relevant to the proceedings. The documents which are asked for now during the pendency of

the petition in the letter dated 20th December, 1995 addressed to the Bank by the petitioner consist of a note from the Chief Manager dated 17.5.1989, a fax dated 4th August, 1989 from the Chief Executive, a fax dated 25.9.89 from the Chief Executive, London and letter dated 9.10.1989 bearing No.OB/Adv/81/675 from DGM, Bombay addressed to Chief Executive, London. At the hearing it was indicated that there would be no objection on the part of the respondent Bank in supplying these documents to the petitioner to enable him to participate in the proceedings pursuant to the show cause notice.

12. The decision of the Supreme Court in Chief of Army Staff Vs. Dharam Pal - AIR 1985 S.C 703 on which reliance was placed on behalf of the petitioner can hardly assist him since in that case it was observed that where the notice issued was without jurisdiction, a person cannot be asked to wait for the enquiry to be caused to him before seeking protection. In the present case, the impugned action is within the jurisdiction of the respondent Bank and therefore, there is no warrant for stopping the process at this stage.

13. Reliance was also placed on the decision of the Supreme Court in Mohinder Singh Vs. Chief Election Commissioner - AIR 1978 S.C. 851, in which the Supreme Court has, in para 8 of the judgement observed that when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. These observations can hardly help the petitioner because the reasons are not now being supplemented but the contemporaneous record shows that the competent authority while rejecting the requests of the petitioner, had taken into account the lapses which are alleged against the petitioner.

14. Even the decision of this Court in Mohanbhai Dungarbhair Parmar Vs. Y.B. Zala, reported in Vol. XX : 1979 G.L.R 497 on which reliance was sought to be placed on behalf of the petitioner in support of the contention that there was delay in proceeding against the petitioner, cannot help the petitioner because in that case the employee was asked to explain whether he had a good and sufficient cause for reporting late on a particular day, 1 1/2 years after the absence and show cause for the lapse. In that context it was held that a mere lapse in regard to such a small matter by itself regardless of the underlying cause for the lapse cannot constitute negligence or dereliction from duty. It was held that having regard to the very nature and content of

the charge, a delay of about 1 1/2 years must be considered fatal from the point of view of affording reasonable opportunity to the constable concerned to show cause against the charge levelled against him.

15. In the present case, the allegations made against the petitioner are of a grave nature and having regard to the magnitude of the matter, if some time is taken to get it investigated and on the basis of report of the Sub-Committee, it is now decided to proceed further in the matter, it cannot be said that the respondents have acted without jurisdiction or illegally.

Under the above circumstances, there is no substance in this petition and the petition is therefore, rejected. Notice is discharged with no order as to costs. Ad-interim relief stands vacated. Any observation made herein will not come in way of the petitioner in defending his case during the Departmental enquiry and the competent authority can, on the basis of the material before it, come to its own conclusions in the matter. Having regard to the facts and circumstances of the case, the request of the petitioner to continue ad-interim relief cannot be accepted.

(R.K.Abichandani,J.)